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7 Refer to File Number: 3968-20080200-PLC

8 Attorneys for Defendant
9 FIRST FEDERAL BANK OF CALIFORNIA
10

11 IN THE UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 DEBORAH E. JOHNSON and
15 GERALD D. JOHNSON,

16 Plaintiffs,

17 v.

18 FIRST FEDERAL BANK OF
19 CALIFORNIA,

20 Defendant.
21

CASE NO. C08-00264PVT

[Ordered Related to Case No. 08-
01796PVT]

DEFENDANT'S CASE
MANAGEMENT STATEMENT

Patricia V. Trumbell, Magistrate

Date: June 3, 2008
Time: 2:00 p.m.
Courtroom: 5

22 **TO THE HONORABLE PATRICIA V. TRUMBELL, MAGISTRATE:**

23 Defendant FIRST FEDERAL BANK OF CALIFORNIA ("Defendant") submits this
24 Case Management Statement to the Court.¹

25 1. Jurisdiction and Service: This court has jurisdiction over this case since it
26 involves federal questions, specifically, issues under the Truth in Lending Act and Home
27 Ownership Equity Protection Act. Defendant contends that the court lacks subject matter
28 jurisdiction over Plaintiff Gerald Johnson, since he was not a party to the loan transaction

¹ The parties met and conferred regarding the matters contained in this Case Management Statement; however, Plaintiffs elected not to sign the attached statement, nor to provide requested modifications prior to the filing due date of May 27, 2008.

1 at issue. Only one Defendant was named, and has been served.

2 2. Facts: Plaintiffs contend that they did not receive proper TILA and HOEPA
3 disclosures, that the loan at issue was induced by fraud, and that the property at issue was
4 wrongfully foreclosed upon. Defendant contends that all of the requisite disclosures were
5 duly provided, that any misrepresentations involved in the loan were made by Plaintiff
6 Gerald Johnson and his mortgage broker, and that the property was properly foreclosed
7 upon after Plaintiff Deborah Johnson defaulted by failing to make the loan payments.

8 3. Legal Issues: The principal legal issue in dispute at this time is whether Plaintiffs
9 have the right to rescind the loan. Plaintiffs contend that the three year statute of
10 limitations in 15 U.S.C. §1635 is still viable. Defendant asserts that the extended three
11 year statute of limitations is not applicable since the proper TILA and HOEPA disclosures
12 were made at the inception of the loan. Further, even assuming *arguendo* that the
13 extended three year statute of limitations was applicable, the non-judicial foreclosure sale
14 extinguished the Plaintiff's right to rescind the transaction.

15 4. Motions: Defendant filed a second Motion to Dismiss, which is scheduled for
16 hearing on June 3, 2008. Plaintiffs filed a motion to remand the related action pending as
17 Case Number 08-01796 PVT, which Defendant opposed. The court has not set a hearing
18 date on the motion to remand.

19 5. Amendment of Pleadings: If Defendant's motion to dismiss the amended
20 complaint is not successful, it plans to bring a cross-complaint against one or both of the
21 Plaintiffs. The motion to dismiss is set for hearing on June 3, 2008. If ruled upon on or
22 about this same date, and the action remains viable, Defendant will file its answer and
23 cross-complaint by the end of June, 2008.

24 6. Evidence Preservation: From Defendant's perspective, evidence preservation is
25 not an issue in this matter. Further, Defendant assumes Plaintiffs will take steps to
26 preserve any pertinent documents and/or other tangible evidence.

27 7. Disclosures: The parties have disclosed most of the relevant documents through
28 the two motions to dismiss filed by Defendant, and opposed by Plaintiff. The parties met

1 and conferred by telephone regarding the issues in this action and agree that further meet
2 and confer efforts should be undertaken after the Motion to Dismiss Amended Complaint
3 set for June 3, 2008 is ruled upon.

4 8. Discovery: If Defendant's Motion to Dismiss Amended Complaint set for
5 hearing on June 3, 2008 is not successful, the parties intend to propound written discovery
6 upon each other. Written discovery is expected to be completed by the end of August,
7 2008. In addition, the parties intend to conduct depositions of the Plaintiffs and key
8 witnesses in September, 2008. At the present time, the parties do not anticipate that any
9 limitations or modifications of the discovery rules will be necessary. However, the parties
10 agree that a discovery plan is difficult to formulate at this time because the case is not at
11 issue.

12 9. Class Actions: Not applicable.

13 10. Related Cases: The action pending as *Gerald Johnson and Deborah Johnson v.*
14 *First Federal Bank of California*, Case Number 08-01796 PVT, has been ordered related
15 to the case at bar. Plaintiffs have filed a motion to remand. Defendant contends the
16 related case is virtually identical to the case at bar, and plans to bring a motion to stay the
17 related action if its motion to dismiss is not granted without leave to amend.

18 11. Relief: To date, Plaintiffs have not formulated their alleged damages.

19 12. Settlement and ADR: The parties discussed ADR and agreed that because
20 Defendant's motion to dismiss the amended complaint is still pending, and will not be
21 heard, ADR is premature at this point in time. The parties requested an ADR telephone
22 conference to discuss this issue with the court.

23 13. Consent to Magistrate Judge for All Purposes: The parties do and have
24 consented to have a magistrate judge conduct all further proceedings including trial and
25 entry of judgment.

26 14. Other References: At this time, the parties do not believe binding arbitration, a
27 special master or the Judicial Panel on Multidistrict Litigation are appropriate.

28 15. Narrowing of Issues: Not applicable at this time.

16. Expedited Schedule: Not applicable at this time.

17. Scheduling: Since the case is not yet at issue, the parties request a continuance of the Case Management Conference, at which point the parties will be better equipped to discuss proposed dates for the designation of experts, discovery cutoff, dispositive motions, pre-trial conference and trial.

18. Trial: Plaintiffs demand a jury trial.

19. Disclosure of Non-party Interested Entities or Persons: The parties have not filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16.

20. The parties request that the Case Management Conference be continued until after Defendant's Motion to Dismiss Amended Complaint (and related case) is heard and ruled upon by the Court.

DATED: May 27, 2008

HEMAR, ROUSSO & HEALD, LLP

By: 

PAMELA L. COX
Attorneys for Defendant
FIRST FEDERAL BANK OF
CALIFORNIA

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is Hemar, Rouso & Heald, LLP. ("the business") 15910 Ventura Boulevard, 12th Floor, Encino, CA 91436.

I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

On May 27, 2008, I served the foregoing document described as **DEFENDANT'S CASE MANAGEMENT STATEMENT** on the interested parties in this action by placing a true and correct copy thereof in a sealed envelope addressed as follows:

DEBORAH E. JOHNSON
 PO Box 4448
 Carmel, CA 93921-4448

GERALD D. JOHNSON
 PO Box 4448
 Carmel, CA 93921-4448

XX At my business address, I placed such envelope for deposit with the Federal Express or
XX U.S. Postal Office by placing them for collection and mailing on that date following ordinary business practices.

 I delivered such envelope(s) by hand to the offices of the addressees.

 I caused such copies to be facsimiled to the persons set forth.

XX (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

 (Federal) I declare under penalty of perjury under the laws of the United States of America that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 27, 2008 at Encino, California.


 LISA FIELDS